

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

FREE HOLDINGS INC.,

*Plaintiff,*

-against-

KEVIN McCOY and SOTHEBY'S INC.,

*Defendants.*

ECF CASE

Case No.: 1:22-cv-00881-JLC

**DECLARATION OF EVAN M. ROTHSTEIN IN SUPPORT OF  
DEFENDANT SOTHEBY'S INC.'S MOTION TO DISMISS THE AMENDED  
COMPLAINT**

I, Evan M. Rothstein, declare as follows:

1. I am an attorney at law duly licensed in the State of Colorado, admitted *pro hac vice* in the above-captioned matter, and work for the law firm of Arnold & Porter Kaye Scholer LLP, attorneys of record for the Defendant Sotheby's Inc. I submit this declaration in support of Defendant Sotheby's Motion to Dismiss the Amended Complaint in this action. I am aware of the facts stated herein of my own knowledge and if called to testify, I could and would competently so testify.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Amended Complaint in this Action ("FAC") (ECF # 47).

3. Attached hereto as **Exhibit B** is a true and correct copy of the website available at Natively Digital: A Curated NFT Sale/ Lot 2,

<https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum>

(the "Auction Listing"), referenced in ¶¶ 9 n.1, 58 n.8, 59 n.9, 61 n.10, 65 n.11, 66 n.12, 73 n.13, 74 n.14 of the FAC.

4. Attached hereto as **Exhibit C** is a true and correct copy of the Video “Kevin McCoy – Quantum” available at Natively Digital: A Curated NFT Sale/ Lot 2, <https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum> [<https://web.archive.org/web/20220208083953/https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum>] (last visited April 27, 2022), referenced in ¶¶ 9 n.1, 58 n.8, 59 n.9, 61 n.10, 65 n.11, 66 n.12, 73 n.13, 74 n.14 of the FAC. Exhibit C is contained on a DVD filed in hard copy, which also contains the video associated with Exhibit E, described below.

5. Attached hereto as **Exhibit D** is a true and correct copy of the transcript of the Video “Kevin McCoy – Quantum” available at Natively Digital: A Curated NFT Sale/ Lot 2 (attached hereto as Exhibit C), <https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum> [<https://web.archive.org/web/20220208083953/https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum>] (last visited April 27, 2022), referenced in ¶¶ 9 n.1, 58 n.8, 59 n.9, 61 n.10, 65 n.11, 66 n.12, 73 n.13, 74 n.14 of the FAC, prepared by a court reporter.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Video “QuantumToken-McCoy” available at Natively Digital: A Curated NFT Sale/ Lot 2, <https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum> [<https://web.archive.org/web/20220208083953/https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum>] (last visited April 27, 2022), referenced in ¶¶ 9 n.1, 58 n.8, 59 n.9, 61 n.10, 65 n.11, 66 n.12, 73 n.13, 74 n.14 of the FAC. Exhibit E is contained on a DVD filed in hard copy, which also contains the video associated with Exhibit C, described above.

7. Attached hereto as **Exhibit F** is a true and correct copy of the transcript of the Video “QuantumToken-McCoy” available at Natively Digital: A Curated NFT Sale/ Lot 2 (attached hereto as Exhibit E), <https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum> [<https://web.archive.org/web/20220208083953/https://www.sothebys.com/en/buy/auction/2021/natively-digital-a-curated-nft-sale-2/quantum>] (last visited April 27, 2022), referenced in ¶¶ 9 n.1, 58 n.8, 59 n.9, 61 n.10, 65 n.11, 66 n.12, 73 n.13, 74 n.14 of the FAC, prepared by a court reporter.

8. Attached hereto as **Exhibit G** is a true and correct copy of the article Elizabeth Howcroft, “NFT Sales Hit \$25 Billion in 2021, But Growth Shows Signs of Slowing,” *Reuters* (January 11, 2022 10:50 AM EST), available at <https://www.reuters.com/markets/europe/nft-sales-hit-25-billion-2021-growth-shows-signs-slowing-2022-01-10/>, cited in FAC ¶ 34 n.2.

9. Attached hereto as **Exhibit H** is a true and correct copy of the article Blake Gopnik, “One Year After Beeple, the NFT Has Changed Artists. Has It Changed Art?,” *N.Y. Times* (March 3, 2022), available at <https://www.nytimes.com/2022/03/03/arts/design/nft-art-beeple.html?msclkid=eacb622dcf0a11ec93b64ee394548d56>, cited in FAC ¶ 95 n.15.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: June 30, 2022  
Denver, Colorado

Respectfully submitted,

By /s/ Evan M. Rothstein  
Evan M. Rothstein